IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1210 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHIKHABHAI DHULABHAI PARMAR

Appearance:

1. Criminal Appeal No. 1210 of 1986

Mr. N.D. Gohil, APP for the appellant

Mr. N.K. Majmudar for the respondent

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 21/04/2005

C.A.V JUDGEMENT

(Per : HON'BLE MR. JUSTICE ANANT S DAVE)

1. Appellant, the State of Gujarat, has preferred this appeal under Section 378 of the Code of Criminal Procedure against the order of acquittal dated 30th June 1986 passed by the learned Additional Sessions Judge, Vadodara, in Sessions Case No.72 of 1986, acquitting the respondent [original accused] of the offence punishable under Section 302 of the Indian Penal Code.

2. It is the case of the prosecution that on 12th January 1986, in the late night, at around 2.30 a.m., the respondent-accused had strangulated his wife, Manjulaben, and committed offence punishable under Section 302 of the Indian Penal Code. The wife of the accused was done to death by strangulating her throat. Initially, a complaint Exh.14 was given by P.W.1, Dhulabhai Chaturbhai, the father of the accused, at Pandu Police Station, which was registered as an accidental death being Entry No.1 of 1986. Thereafter, PSI, Panchani, of Pandu Pooice Station had visited the place of incident at Dhantej village. After the inquest panchanama was drawn, the dead body of Manjulaben was sent to the hospital at Pandu, and, thereafter, according to the certificate (Exh.20) issued by the Medical Officer of Pandu Health Center, the cause of death of deceased, Manjulaben, was due to strangulation, which led to asphexia and death. The cause of death per the post-mortem (Exh.19) was also strangulation leading to asphexia and death. P.W.9, PSI, Panchani, of Pandu Police Station, filed a complaint Exh.29 on the basis of the post-mortem report and the certificate of the Medical Officer and, therefore, an offence was registered under Section 302 of the Indian Penal Code against the respondent-accused. PSI Panchani had taken statements of the relatives of the accused as well as deceased, Manjulaben. The statements of the father, the mother, the brother and the sister-in-law of the accused were taken along with the statements of the father and the brother of deceased, Manjulaben. According to the statements recorded by PSI Panchani, it was disclosed that the deceased Manjulaben had gone to the field and, when the accused followed her, she suddenly got up and the accused saw one persons running from the field and the accused doubted that his wife had an illicit relation with some other person. Therefore, when the accused was sleeping with his wife in the kitchen on the day of incident, the accused had asked about the person who had run away from the field on seeing him, and was found with his wife and, continuously questioned about the said person, but, the name of the said person was not disclosed by deceased, Manjulaben,

and, therefore, the accused got angry and, therefore, pressed his one hand on her mouth so that she cannot shout and the other hand was pressed on her throat to strangulate and, after some time, deceased, Manjulaben, had died. Thereafter, the accused had brought pesticides which was used for cotton crop, and poured said pesticides in the mouth of his wife and the empty bottle of pesticides and glass were put near the cot. According to the PSI, Panchani, the accused was arrested on 16th January 1986 and was remanded to the judicial custody. After the post-mortem report was received, and the panchanama of scene of offence was drawn and, on conclusion of investigation, the respondent was chargesheeted in the Court of the learned Chief Judicial Magistrate, Vadodara, for commission of offence punishable under Section 302 of the Indian Penal code. As the offence punishable under Section 302 of the Indian Penal Code was triable by the Sessions Court, the learned Magistrate, by order dated 16th April 1986, committed to the Sessions Court, Vadodara, for trial, where it was numbered as Sessions Case No.72 of 1986.

3. The learned Judge had framed charge against the respondent at Exh.1 of the offences punishable under Section 302 of the Indian Penal Code. The charge was read over and explained to the respondent, who had pleaded not guilty to the same and claimed to be tried.

4. In order to prove its case against the respondent, the prosecution had examined (1) P.W.1, Dhulabhai Chaturbhai, Exh.13; (2) P.W.2, Raiben Dhulabhai, Exh.15; (3) P.W.3, Somabhai Manabhai, Exh.16, (4) P.W.4, Prabhatsinh Somsinh, Exh.17; (5) P.W.5, Dr. Akshay Maldevsinh, Exh.18; (6) P.W.6, Dilipsinh Fatehsinh, Exh.21; (7) P.W.7, Chandubhai Madhabhai, Exh. 22; (8) P.W.8, Shantaben Maganbhai, Exh.27, and (9) P.W.9, Rameshchandra Hiralal. The prosecution had also produced documentary evidence, such as report of the FSL, panchanama of scene of offence, post-mortem note, certificate issued by the Doctor, inquest panchanama, etc. in support of its case against the respondent.

5. The learned Public Prosecutor had submitted before the trial court about 13 documents and examined a number of witnesses. The prosecution examined P.W.1, Dhulabhai Chaturbhai, Exh.13, who had initially given complaint at Exh.14, where the accidental death was registered being Entry No.1 of 1986. The mother of the accused, P.W.2, Smt. Raiben, Exh.15, was declared hostile, while the father of the deceased Manjulaben, P.W.3, Somabhai Manabhai, Exh.16, the brother of the

deceased, Manjulaben, P.W.4, Prabhasinh, Exh.17, were also examined. P.W.5, Dr. Akshay Maldev, Exh.18, who submitted post-mortem report (Exh.19) and the certificate issued (Exh 20), was also examined. P.W.7, Chandu Madhabhai, Exh.22, (panch), was also examined and inquest panchanama was produced at Exh.23, and, in cross examination, at Exh.24, he was declared hostile. The prosecution also examined Shantaben Maganbhai, Exh.27, who happens to be the cousin sister of the deceased, Manjulaben, and aunt of the accused. Scene of panchanama Exh.26 and complaint filed by PSI, Panchani, at Exh.29 were produced on record. After recording of evidence of prosecution witnesses was over, the learned Judge had explained to the respondent the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statements as required by Section 313 of the Code of Criminal Procedure. In his further statement, the respondent denied the charge framed against him.

6. Thereafter, the learned advocates of the parties were heard by the learned Additional Sessions Judge, Vadodara. The learned Judge has, elaborately, dealt with the documentary evidence as well as oral evidence in the form of depositions and, after discussing the same with reasoning, has come to the conclusion that the prosecution has not established the offence against the accused and even, on the basis of circumstantial evidence also, it is not proved beyond doubt that the accused had committed the offence punishable under Section 302 of the Indian Penal Code. The learned trial Judge has, after appreciating the evidence on record, observed that even no circumstantial evidence is found on record to connect the accused with the crime and the chain of circumstance is not such which leads to only conclusion that the crime was committed by the accused, and none else. According to the learned Judge, no reliable evidence was adduced to prove the charge against the respondent of the offences punishable under Section 302 of the IPC and, therefore, the respondent was entitled to be acquitted of those offence. In view of the abovereferred to conclusion, the learned Judge has acquitted the respondent of the offences punishable under Section 302 of the IPC giving rise to abovenumbered appeal.

7. Heard the learned advocates for the parties.

8. The learned Additional Public Prosecutor, Mr. N.D. Gohil, appearing for the State, has mainly relied on the medical evidence to assail the judgment of the

learned Additional Sessions Judge, Vadodara, dated 30th June 1986 in Sessions Case No.72 of 1986. According to Mr. Gohil, there was ample evidence, namely, post-mortem report Exh.19 and certificate Exh.20, about strangulation which is led to asphesiz and death. According to Mr. N.D. Gohil, the accused has confessed the crime and has stated that he had doubt about the character of deceased Manjulaben and she was having illicit relation with an unknown person and when the deceased Manjulaben did not disclose the name of the unknown person, the accused strangulated her to death. Therefore, according to Mr. N.D. Gohil, the only conclusion, which can be drawn, is that the accused, Bhikhabhai, had killed his wife. He has further submitted that, initially, they had circulated a false story of Manjulaben taking liquid poison so as to suppress the real cause of her death, which was strangulation. Not only that, initially, the father and the mother, namely, Dhulabhai and Raiben, had also supported this version, but, later on, after receiving the medical report, they made statement before the police that Manjulaben was strangulated by Bhikhabhai. Therefore, according to the learned APP, Mr. N.D.Gohil the learned trial judge was not right in acquitting the accused, Bhikhabhai, of the offence under Section 302 of the Indian Penal Code. The learned APP has submitted that the evidence on record has not been appreciated in its correct perspective by the learned trial Judge and, therefore, the present appeal should be allowed.

9. Learned advocate, Mr. N.K. Majmudar, appearing for the respondent-accused, has strongly supported the findings of the learned trial Judge, on the ground that, in the case of circumstantial evidence, unless the chain of events is complete, a person cannot be convicted and, normally, the presumption of innocence is in favour of the accused that he has not committed any crime. According to Mr. N.K. Majmudar, after appreciating the entire evidence - oral as well as documentary - on record, the learned Judge has rightly come to the conclusion that, when there is no direct evidence or even eye-witness to support the case of the prosecution, and the Panchas have become hostile and deposition of the expert, namely, Medical Officer, P.W. 5, Dr. Akshay Maldevsinh, Exh.18, clearly stated that by applying force by one hand, normally the person cannot be done to death by strangulation and, when there was no sign of any injury or bruises on the body of the deceased Manjulaben, particularly on the neck, no conclusion can be drawn for connecting the accused, Bhikhabhai, with the crime. Mr. N.K.Majmudar has further submitted that even the cousin

of the deceased Manjulaben, P.W.8, Shantaben (Exh.27), who also happens to be the aunt of the deceased, has also stated that Bhikhabhai was not present at the place of incident during the night of the incident and even in the early morning at 6 a.m. on 12th January 1986, she had seen Manjulaben brushing her teeth. Learned advocate,Mr. N.K. Majmudar has further relied upon the evidence of the father and the brother of the deceased Manjulaben about their visiting village Dhantej on the day of the incident, i.e. 12th January 1986 and, thereafter, on 13th January 1986 and 16th January 1986 and, according to their statements also, initially, they had no reason to disbelieve the fact that the deceased Manjulaben had consumed poison, but, subsequently, on receipt of the medical report, and from the hearsay of the people, they had come to know that the deceased Manjulaben was strangulated to death. The time about the statements having been recorded by the police is also contradictory in as much as P.W.4, Prabhatsinh, says that he had left village Dhantej on 16th January 1986 at about 9.30 a.m., while, PSI, Panchani, had recorded the statement of P.W.4, Prabhatsinh, at noon on 16th January 1986 at about 1 o' clock. Learned advocate, Mr.N.K. Majmudar, has further submitted that the relationship between the deceased Manjulaben and the accused, Bhikhabhai, was cordial, and, at no point of time, any complaint about her character was received. Even the deceased Manjulaben had also made no grievance about the treatment given by her in-laws and no harassment was meted out to her. All these circumstances, according to learned advocate Mr. N.K. Majmudar, would go to show that there was no reason for the accused, Bhikhabhai, to strangulate his wife and, therefore, in the absence of any material evidence, the learned trial judge was right in acquitting the respondent-accused of the offence under Section 302 of the Indian Penal Code.

9.1 Learned advocate, Mr. N.K. Majmudar, appearing for the respondent-accused, has also relied upon the judgments of the Honourable Supreme Court in the case of Harijana Thirupala and others vs. Public Prosecutor, High Court of A.P., reported in AIR 2002 Supreme Court p.2821 and in the case of Kunju Mohammed vs. State of Kerala, reported in JT 2003 (7) Supreme Court 114, and urged that when two views are possible, the view, which is in favour of the accused, is normally to be given approval by the higher court and the acquittal of the trial court, unless the same is found to be perverse, may not be reversed by the Court in appeal.

10. This Court has taken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. From the record of the case, it is evident that P.W.1, Dhulabhai Chaturbhai, Exh.13, who had initially informed the police that the death of Manjulaben was due to consumption of poison, had no reason to register a false complaint before the police. According to P.W.1, Dhulabhai Chaturbhai, Exh.13, during the night of the incident, he was at his field and in the morning when he was informed by his nephew that Manjulaben had become conscious, on reaching home, he found Manjulaben lying on the cot and immediately he had gone to call the Doctor, but the Doctor was not available and when he came back to his residence, Manjulaben expired. Not only that, but he had informed the Sarpanch and Police Patel of the village, and, on their advice, he had gone to the police station to register the incident. He also informed the father and the brother of deceased Manjulaben at village Ratanpur that deceased Manjulaben had died by consuming pesticides. The learned Judge has not, rightly, believed the statement which was recorded by PSI, Panchani, on 16th January 1986 that the accused Bhikhabhai had informed his father and mother that he had strangulated deceased Manjulaben to death, since there was suspicion about her character that she had illicit relation with some person and particularly in the evening of 11th January 1986, Manjulaben was found with some unknown person who on seeing the accused ran away from the field and his wife, Manjulaben, suddenly got up by removing the clay from her back, and, on persistent enquiry during the night, when she refused to disclose the name of unknown person with whom she had illicit relation, Bhikhabhai had strangulated her with one hand by putting another hand on her mouth so that she cannot shout and, subsequently, a false story was made out by Bhikhabhai that deceased Manjulaben had consumed poison.

11. The mother of the accused, P.W.2, Raiben, Exh.15, has also not supported the case of the prosecution, and, according to her, when Raiben had gone to awaken Manjulaben in the morning, she was found unconscious and, therefore, she sent her nephew, Kalubhai, to call Dhulabhai who was on that night sleeping at his field. She has also denied as to what is stated in her statement recorded by the PSI, Panchani, on 12h January 1986, 13th January 1986, 14th January 1986 and 16th January 1986 and she was declared hostile. P.W.8, Shantaben Manganbhai, Exh.27, was also examined by the prosecution, who happens

to be the cousin sister and aunt of the deceased Manjulaben and one of the panch witnesses when the inquest panchanama was drawn. According to her version, no such incident of strangulation had taken place and she was also declared hostile subsequently. P.W.3, Somabhai Manabhai, Exh.16, father of the deceased Manjulaben, and P.W.4, Prabhatsinh Somsinh, Exh.17, were also examined. According to Somabhai, on receiving information that his daughter had died at village Dhantej, along with his two sons, Prabhat and Ganpat, with other persons of village Ratanpur, they had gone to village Dhantej on 12.1.1986 at 9 a.m. When they reached village Dhantej, which was 2 kms away from village Ratanpur, they found Manjulaben expired and the reason was that she had consumed pesticides, as told by uncle-in-law, Maganbhai Somabhai. Thereafter, the dead body of deceased Manjulaben was taken to the Pandu Hospital and, on the next day, on receipt of post-mortem report and certificate issued by the Doctor, they came to know that deceased Manjulaben died of strangulation and not by consuming pesticides. Thereafter, Somabhai and Prabhatbhai had gone to village Dhantej and contacted Dhulabhai Somabhai, father-in-law of deceased Manjulaben and informed them that they had given wrong reason of death of deceased Manjulaben. P.W.3, Somabhai Manabhai, also deposed that there was no complaint from his daughter about undue harassment from her in-laws and when on 11.1.1986, the brother of deceased Manjulaben, Ganpat, had gone to village Dhantej to invite his sister for Uttarayan, he was informed by accused, Bhikhabhai, that deceased Manjulaben would be sent after one or two days since crop was harvested in the field and, thereafter, Ganpat had gone back to village Ratanpur after taking tea at the house of his sister, deceased Manjulaben. According to P.W.3, Somabhai Manabhai, and P.W.4, Prabhatsinh, they had received information about the cause of death of Manjulaben on the basis of medical reports only. Thereafter, their further statements were recorded by the police on 12th January 1986, 13th January 1986 and 16th January 1986 by the police at Dhantej Chora, a meeting place of the panchayat of the village. P.W.4, Prabhatsinh, stated that initially his statements were recorded on 12th January 1986 and, after the inquest panchanama was drawn, the dead body of his sister was taken to Pandu, a place 8 to 10 kms away from village Dhantej. The dead body of Manjulaben was placed in a trolly of he tractor and it was accompanied by Dhulabhai, Shantaben and another person. Initially, he had stated that the dead body was tied with a rope, but, subsequently, he improved and stated that rope was not tied. After the post-mortem was completed, the dead body

was brought back to village Dhantej on 13.1.1986 and, after completing the cremation, all of them had gone to village Ratanpur, and, at the place of cremation, they had not seen the accused. He also stated that he had come to know about the cause of death of the deceased Manjulaben, on the basis of medical report that she was strangulated and not due to consumption of pesticides. According to him, no harassment was meted out to her and, at no point of time, she was suspected of loose character by her in-laws including the accused. He further stated that his further statement was recorded on 16.1.1986 at 13.00 hrs at Chora of Dhantej, where his father was not present.

12. We have noticed that the learned trial judge rejected the evidence of P.W.9, Rameshchandra Hiralal Panchani, who was working as PSI, Pandu Police Station, at the relevant time, Exh.28. He deposed that initially he recorded the complaint at Exh.14 as informed by Dhulabhai that deceased Manjulaben died due to consumption of some liquid poison and, therefore, it was registered as accidental death at Entry No.1/86. After the post-mortem report and the certificate given by the Doctor of Pandu Hospital were received, it was found that deceased Manjulaben died due to strangulation which led to asphexis and death and, therefore, Complaint No.2/86 was registered at Pandu Police Station, for the offence under Section 320 of the Indian Penal Code and, after collecting necessary evidence, the accused was arrested and remanded to judicial custody. He has, by and large, adhered to what is stated in the complaint at Exh.29. According to him, the statements of Dhulabhai and Raiben, had disclosed that deceased Manjulaben was done to death due to strangulation and even when inquest panchanama was drawn, Shantaben said that clay was found in the private parts of deceased Manjulaben and, therefore, there was ample evidence against the accused. He further deposed that, by recording statements of Somabhai and Prabhatsinh, father and brother of deceased Manjulaben, it was found that the accused had committed the offence. He has denied that he has stated incorrectly to involve the accused in the offence. His testimony bears number of contradictions with regard to time when he recorded statements of the father and the brother of the deceased Manjulaben.

13. P.W.8, Shantaben Manganbhai, who happens to be the cousin of deceased Manjulaben, clearly stated in her cross examination that she had seen deceased Manjulaben in the early morning at 6 a.m. on 12.1.1986 when Manjulaben was brushing her teeth and Raiben had gone to

fetch water. According to Shantaben, Manjulaben was alive between 6.30 a.m. and 7.00 a.m. and, thereafter, at about 7 a.m. she went to the residence of deceased Manjulaben on hearing noises where Manjulaben was found unconscious. According to her, it was not true that the clay was found in the private parts of deceased Manjulaben and when the dead body was subsequently taken to Pandu Hospital in a tractor, the road was bumpy and the body of deceased Manjulaben was tied with a rope on the neck. P.W.8, Shantaben Maganbhai, has deposed that the accused was not at his residence during the night of the incident. Even P.W.5, Dr. Akshay Maldevsinh, Exh. 19, also deposed that it was impossible to strangulate a lady of 28 years with good health by one hand and in normal circumstances, the death cannot be caused. According to the Doctor, the post-mortem was carried out on 13.1.1986 and, as per the case of prosecution, the death had occurred in the early morning hours of 12.1.1986. The post-mortem was carried out after 32 hours. As per his deposition, rigor mortis of the dead body starts after 10/12 hours and if the death had occurred before 32 hours, the dead body starts stinking. While, in the present case, the body had no bad odour. There was no swelling on the neck of the dead body and, at the same time, no sign of injury was found.

14. It is further to be noted that as per the evidence of P.W.5, Dr. Akshay Maldevsinh, a healthy person cannot be strangulated to death by applying force with one hand and in the case of attempting to strangulate person, there was possibility of struggle resistance or even injury on the body and such person can also shout for help. Even the case of the prosecution was found unnatural by the learned Judge, and rightly so, on the ground that no woman would succumb without resistance or struggle when clay is applied on the tender part of her body and when the mother, the brother and the sister-in-law were sleeping in the adjoining room, yet, there was no noise of deceased Manjulaben and, therefore also, the story of the prosecution was unbelievable. After discussing the evidence of P.W.1, Dhulabhai, that he himself had initially volunteered to report to the police about the death of deceased Manjulaben and he had informed the police patel and sarpanch of the village and also the father and the mother of deceased Manjulaben residing at the nearby village of Ratanpur, the learned Judge has rightly observed that the conduct of P.W.1, Dhulabhai, is nothing but natural and it could not be said that he was lying and there was no reason for him to say incorrect story about the incident. As observed by the learned trial Judge, the statements of P.W.3,

Somabhai Manabhai, and P.W.4, Prabhatsinh, father and brother, respectively, of deceased Manjulaben, are having full of contradictions. According to P.W.4, Prabhatsinh, in the morning at 9 a.m. on 16th January 1986, they had gone to village Dhantej and after the stay of about 15 minutes, they had left village Dhantej for Ratanpur. While, P.W.9, PSI Panchani, says that the statements of P.W.3, Somabhai Manabhai and P.W.4, Prabhatsinh, were recorded in the noon at 13 hrs at the Chora of Dhantej on 16th January 1986. It is observed by the learned trial Judge that all the panchas, namely, P.W.7, Chandubhai Madhabhai and P.W.8, Shantaben Maganbhai, have been declared hostile and they have not supported the case of the prosecution.

15. After analysing, sifting and assessing the evidence on record with particular reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny, this Court finds that there was no evidence to connect the accused with the crime. There was no eye-witness, and the case is solely based on circumstantial evidence. The chain of events are not complete to connect the accused with the crime in question, and, therefore, the respondent is entitled to benefit of a reasonable doubt. As propounded by the Supreme Court, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him, he would retain that benefit in the appellate court also. In our view, acquittal of the respondent can hardly be regarded as illegal or erroneous on the basis of evidence on record.

16. We have gone through the ratio laid down in the decisions of the Apex Court in the case of Harijana Thirupala and others vs. Public Prosecutor, High Court of A.P., reported in AIR 2002 Supreme Court p.2821 and in the case of Kunju Mohammed vs. State of Kerala, reported in JT 2003 (7) Supreme Court 114, relied upon by the learned advocate Mr. N.K. Majmudar appearing for the respondent. In paragraph 12, in Harijana Thirupala (supra), the Apex Court has held as under:

> "Doubtless the High Court in appeal either against an order of acquittal or conviction as a Court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets

> reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial Court would have proceeded to record a conviction: a duty is case on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity."

In the case of Kunju Mohammed (supra), the Apex Court has held, in paragraph 19, as under:

> "Thus, we find most of the reasons given by the High Court for rejecting the conclusions of the learned sessions judge are unacceptable. At this juncture, we would like to bear in mind the law laid down by this Court in regard to reappreciation of evidence by the High Court in appeal against acquittals. This Court in Dhanna etc v. State of M.P. [JT 1996 (6) SC 652: 1996 (10) SCC 70], had laid down that though the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. While doing so it ought to bear in mind: first, that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal. Secondly, it should bear in mind that every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him, he would retain that benefit in the appellate Court also. Thus, the appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interfered with or disturbed."

It is, therefore, clear, from the law laid down by the Apex Court, that the Court in appeal will be loathe in interfering with the findings of fact arrived at by the learned trial judge on scrutiny of evidence on record and, when two views are possible even on reappreciation of evidence, benefit of doubt must go in favour of the

accused as per the settled law, and, therefore, in the present case, no infirmity in appreciating the evidence by the learned trial judge is found and, therefore, the order of acquittal passed by the learned trial judge does not require any interference by this Court.

17. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned trial judge who had opportunity to observe demeanour of the witnesses. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned trial judge for acquitting the respondents. Suffice it to say that the learned trial judge has given cogent and convincing reasons for acquitting the respondents. As this Court is in general agreement with the view expressed by the learned trial judge, the Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned trial judge and this Court is of the opinion that expression of general agreement with the view taken by the learned trial judge would be sufficient in the facts of the case. The learned Additional Public Prosecutor has failed to convince this Court to take a view contrary to the one already taken by the learned trial judge.

18. In the result, the appeal fails and is dismissed. Muddamal to be disposed of in terms of the directions given by the learned Judge in the judgment impugned in the appeal.

(R.P. Dholakia)
Judge

(Anant S. Dave)
Judge

(swamy)